

### **REMARKS**

Claim 1 has been amended to incorporate the subject matter of claim 7. Accordingly, no new matter has been added and no new issues raised by the amendment. Support for the amendment can be found, for example, in the specification and in the cancelled claim. Claims 7 and 14-20 has been cancelled without prejudice.

Claims 1-6 and 8-13 are pending.

### **CLAIM REJECTIONS**

#### ***Rejection under 35 U.S.C. § 102(e)***

The Examiner has maintained the rejection of claims 1-6 and 8-13 under 35 U.S.C. § 102(e) as being unpatentable over U.S. Patent No. 7,014,878 to Tangprasertchai et al. ("Tangprasertchai"). See Office Action at p. 2. Claims 2-6 and 8-13 depend from independent claim 1. In an effort to expedite prosecution and not in acquiescence to the rejection, the subject matter of claim 7 has been included in claim 1.

Applicants have discovered a non-yeast leavened fine bakery product with increased shelf life that includes an intermediate or high moisture baked product having a water activity  $a_w > 0.8$ , the surface of the bakery product having deposited thereon an effective amount of natamycin which is sufficient to keep the product mould free when packaged for a storage time of 2 weeks or more at ambient temperature wherein the effective amount of natamycin includes from 1 to 10  $\mu\text{g per cm}^2$  of the surface of the baked product. See claim 1.

Tangprasertchai describes

[a] fully baked bread product is provided which can be stored for extended periods of time and which retains its desirable soft texture for the shelf life (e.g., at least about 3 months) of the product if maintained under a modified atmosphere (i.e., low oxygen and preferably inert gas) at refrigerated conditions (i.e., about 35 to about 45.degree. F.). The fully baked bread is prepared from dough comprising, in baker's percentages, about 100 pounds flour, about 0.75 to about 3.5 pounds salt, about 0.2 to about 1 pounds microbial inhibitor, about 0 to about 3 pounds gluten, about 1 to about 5 pounds leavening agent, about 0.1 to about 1 pound enzyme, about 9 to 18 pounds high fructose corn syrup, about 3 to about 10 pounds shortening, about 0.1 to about 3 pounds mono- and diglycerides, and about 45 to about 60 pounds of water.

(emphasis added). See abstract of Tangprasertchai. Tangprasertchai uses inhibitors in amounts calculated in pounds whereas the fine bakery product described in claim 1 utilizes natamycin sprayed in the surface in  $\mu\text{g}$  amounts. Tangprasertchai does not describe that the surface of a bakery product has deposited thereon an effective amount of natamycin which is sufficient to keep the product mould free when packaged for a storage time of 2 weeks or more at ambient temperature wherein the effective amount of natamycin includes from 1 to 10  $\mu\text{g}$  per  $\text{cm}^2$  of the surface of the baked product.

Accordingly, independent claim 1 is not anticipated by Tangprasertchai. Claims 2-6 and 8-13 depend from claim 1 and are also not anticipated by Tangprasertchai for at least the reasons described above. Applicants respectfully request reconsideration and withdrawal of this rejection.

***Rejection under 35 U.S.C. § 103(a)***

The Examiner has maintained the rejection of claims 1-13 “under 35 U.S.C. § 103(a) (based on 102(e))” as being unpatentable over Tangprasertchai, further in view of U.S. Patent No. 3,996,386 to Malkki (“Malkki”), applicants’ admission of the prior art<sup>1</sup>, U.S. Patent No. 3,753,734 to Kaplow et al. (“Kaplow”), U.S. Patent No. 3,655,404 to Glasser et al. (“Glasser”), U.S. Patent No. 3,021,219 to Melnick (“Melnick”), U.S. Patent No. 6,210,723 to Coleman et al.

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<sup>1</sup> Applicants wish to clarify the phrase “applicants’ admission of the prior art” that has been referred to by the Examiner again in this Office Action. See Office Action at p. 4. The Examiner remains unclear as to what a true admission of prior art is and Applicants respectfully remind the Examiner that “[a] statement by an applicant during prosecution identifying the work of another as ‘prior art’ is an admission that that work is available as prior art against the claims, regardless of whether the admitted prior art would otherwise qualify as prior art under the statutory categories of 35 U.S.C. 102. *Riverwood Int’l Corp. v. R.A. Jones & Co.*, 324 F.3d 1346, 1354, 66 USPQ2d 1331, 1337 (Fed Cir. 2003).” See MPEP 2129. Applicants again respectfully submit that such an admission **has not been made** within the specification. The paragraphs where the Examiner has cited as being an admission of prior art (see p. 4 of the Office Action) are merely background information. The Background section of the application is intended to describe the field of the art and the problems involved. None of the references cited in the specification should be considered an admission of prior art by the Applicants.

The Examiner has additionally reminded Applicants of their duty of disclosure. See Office Action at p. 4. Applicants note that the Encyclopedia of Food Technology article referred to by the Examiner was submitted in an Information Disclosure Statement filed July 2, 2004 and considered by the Examiner on October 18, 2006.

("Coleman"), U.S. Patent No. 5,409,717 to Apicella et al. ("Apicella"), U.S. Patent No. 5,225,222 to Cha et al. ("Cha"), and the Johnson et al., Encyclopedia of Food Technology (1974) ("Johnson"). See Office Action at p. 2. In an effort to expedite prosecution and not in acquiescence to the rejection, the subject matter of claim 7 has been included in claim 1. Claim 7 has been cancelled. Claims 2-6 and 8-13 depend from independent claim 1.

As previously discussed, Tangprasertchai does not describe that the surface of a bakery product has deposited thereon an effective amount of natamycin which is sufficient to keep the product mould free when packaged for a storage time of 2 weeks or more at ambient temperature wherein the effective amount of natamycin includes from 1 to 10  $\mu\text{g}$  per  $\text{cm}^2$  of the surface of the baked product. Moreover, Tangprasertchai does not teach or suggest a non-yeast leavened fine bakery product where the surface of a bakery product has deposited thereon an effective amount of natamycin which is sufficient to keep the product mould free when packaged for a storage time of 2 weeks or more at ambient temperature wherein the effective amount of natamycin includes from 1 to 10  $\mu\text{g}$  per  $\text{cm}^2$  of the surface of the baked product. That is nothing in Tangprasertchai that would suggest to a person of skill in the art that to deposit an effective amount of natamycin which is sufficient to keep the product mould free when packaged for a storage time of 2 weeks or more at ambient temperature wherein the effective amount of natamycin includes from 1 to 10  $\mu\text{g}$  per  $\text{cm}^2$  of the surface of the baked product.

Such a defect is not remedied in the remaining references. Malkki describes a "method for preventing moulding or other microbial surface deterioration of foods and feeds due to micro-organisms by using a preservative substance, either a chemically defined food additive or a vegetable extract having microbicidal or microbe-inhibiting effect." See Abstract. Specifically, Malkki is concerned with mould in "half-dry food articles and feeds such as bread, cheeses, smoked fish, dry sausages, air dried fruits and air dried fish ...." See col. 1, lines 11-14 of Malkki. Malkki does not teach or suggest use of natamycin. Further, the only concentration provided in Malkki is in Example 6 which describes the "[t]he concentration of propionic acid in the surface samples ... was 0.14% ...." See col. 6, lines 20-22 of Malkki. Malkki does not teach or suggest a non-yeast leavened fine bakery product where the surface of a bakery product has deposited thereon an effective amount of natamycin which is sufficient to keep the product mould free when packaged for a storage time of 2 weeks or more at ambient temperature wherein

the effective amount of natamycin includes from 1 to 10  $\mu\text{g}$  per  $\text{cm}^2$  of the surface of the baked product.

Kaplow describes “pancake and waffle products which are shelf stable against microorganic decomposition, to the extent that the necessity of further treatments to provide bacteriostasis and protection against development of molds is avoided.” See col. 1, lines 7-11. Kaplow further describes using some antimycotics such as pimarinic acid at levels in the order of 50 ppm. See col. 3, lines 12-20 of Kaplow. Kaplow, however, does not teach or suggest a non-yeast leavened fine bakery product where the surface of a bakery product has deposited thereon an effective amount of natamycin which is sufficient to keep the product mould free when packaged for a storage time of 2 weeks or more at ambient temperature wherein the effective amount of natamycin includes from 1 to 10  $\mu\text{g}$  per  $\text{cm}^2$  of the surface of the baked product.

Glasser describes “French toast which is shelf stable against microorganic decomposition to the extent that the necessity of further treatments to provide bacteriostasis and protection against development of molds is avoided.” See col. 1, lines 3-6 of Glasser. Glasser also discloses that “in the case of some antimycotics such as pimarinic acid” levels in the order of 50ppm can be used. See col. 2, lines 56-62 of Glasser. However, Glasser does not teach or suggest a non-yeast leavened fine bakery product where the surface of a bakery product has deposited thereon an effective amount of natamycin which is sufficient to keep the product mould free when packaged for a storage time of 2 weeks or more at ambient temperature wherein the effective amount of natamycin includes from 1 to 10  $\mu\text{g}$  per  $\text{cm}^2$  of the surface of the baked product.

In addition, Melnick, Coleman, Apicella, Cha and Johnson references, alone or in combination, also do not teach or suggest a non-yeast leavened fine bakery product where the surface of a bakery product has deposited thereon an effective amount of natamycin which is sufficient to keep the product mould free when packaged for a storage time of 2 weeks or more at ambient temperature wherein the effective amount of natamycin includes from 1 to 10  $\mu\text{g}$  per  $\text{cm}^2$  of the surface of the baked product.

None of the above-cited 9 references, alone or in combination, teach or suggest a non-yeast leavened fine bakery product where the surface of a bakery product has deposited thereon an effective amount of natamycin which is sufficient to keep the product mould free when

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packaged for a storage time of 2 weeks or more at ambient temperature wherein the effective amount of natamycin includes from 1 to 10  $\mu\text{g}$  per  $\text{cm}^2$  of the surface of the baked product.

Accordingly, claim 1 and claims that depend therefrom are patentable over the above-cited 9 references. Applicants respectfully request the withdrawal of the rejection.

### **CONCLUSION**

For the foregoing reasons, Applicants respectfully request reconsideration and withdrawal of the pending rejections. Applicants believe that the claims now pending are in condition for allowance. Should any further fees be required by the present Amendment, the Commissioner is hereby authorized to charge Deposit Account **19-4293**.

Respectfully submitted,

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